

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH**

HENRY JAMES HOLMES,)	
)	
Plaintiff,)	Civil Action No. 2: 22-cv-01375
)	Chief Judge Mark R. Hornak
v.)	Magistrate Judge Cynthia Reed Eddy
)	
MICHAEL VEITH, Pittsburgh City Police)	
Officer; ORLANDO HARPER, Allegheny)	
County Jail Warden, JOSE MANUEL)	
CARVALLO, JR., Allegheny County)	
Public Defender; COLONEL ROBERT)	
EVANCHICK, Penn State Police)	
Commissioner, B. SMITH, D. CORBETT,)	
ROBERT FORMAN, ABEL SORIA, A.)	
SANDQUIST, Deceased, DONNA L.)	
JOHNSON, ATTY JORGE HERNANDEZ,)	
CINDI BETH MISHKIN, and RAJON)	
MALINE,)	
Defendants.)	

MEMORANDUM OPINION

Plaintiff, Henry James Holmes, initiated this civil rights case on September 28, 2022, by the filing of a Motion for Leave to Proceed in forma pauperis (“IFP motion”). ECF No. 1. Attached to the IFP motion was a Complaint for a Civil Case, which was lodged pending disposition of the IFP motion. The IFP motion was granted on October 3, 2022, ECF No. 3, and the Complaint filed that day. ECF No. 4. The case was referred to Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rule 72 of the Local Rules for Magistrate Judges.

Magistrate Judge Eddy, in a Report and Recommendation (the “Report”), ECF No. 5, filed on October 24, 2022, recommended that the Complaint be dismissed pre-service pursuant to 28

U.S.C. § 1915(e), which permits pre-screening of complaints filed by plaintiffs who are granted in forma pauperis status. The Report recommended preservice dismissal of the Complaint because the claims brought against the Pennsylvania Defendants are identical and repetitious of Plaintiff's claims filed at civil action 22-cv-580 and are time barred. Further, the allegations against the California Defendants are likewise time barred and fail to state a claim upon which relief can be granted. Service of the Report was made on Plaintiff at his address of record.

The Report further explained that Plaintiff's objections to the Report, if any, were to be filed by November 10, 2022, and that failure to file timely objections would waive the right to appeal. To date, Plaintiff has not filed any objections to the Report and there has been no activity on the docket since the Report was filed.

After de novo review of the pleadings and the documents in the case, together with the Report and Recommendation, the Court finds that the Report's conclusions that Plaintiff's Complaint is repetitious of Plaintiff's previous civil action filed at 22-cv-580 and that Plaintiff's Complaint fails to state a claim upon which relief can be granted are correct and adopts the same.¹ Accordingly, the Report will be adopted as the Opinion of the Court in all respects.

An appropriate Order follows.

Dated: November 14, 2022

s/Mark R. Hornak
MARK R. HORNAK
CHIEF UNITED STATES DISTRICT JUDGE

¹ If a party does not file timely objections to a magistrate judge's report and recommendation, the party may lose its right to de novo review by the district court, although the court must still give "reasoned consideration" to the magistrate judge's report before adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878-79 (3d Cir. 1987).

cc: The Honorable Cynthia Reed Eddy
United States Magistrate Judge

Henry James Holmes
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